

TABLE OF CONTENTS

<u>FOUND 5 - LOSS AND DESTRUCTION</u>	1
<u>OF EVIDENCE, DUE PROCESS VIOLATIONS</u>	2
<u>STATEMENT OF FACTS - PAGES 1-12</u>	3
	4
	5
	6
	7
	8
	9
	10
	11
	12
	13
	14
	15
	16
	17
	18
	19
	20
	21
	22
	23
	24
	25
	26
	27
	28
	29
	30
	31

1 GROUNDS 5 - LOSS AND DESTRUCTION OF EVIDENCE IN VIOLATION OF  
2 PETITIONERS. U.S. FEDERALLY GUARANTEED 14TH AMENDMENT  
3 DUE PROCESS AND EQUAL PROTECTION CLAUSES DUE TO THE  
4 LOSS AND ALLEGED INADVERTENT DESTRUCTION OF THE  
5 ALLEGED 911 TAPES ON 3-19-04 BY THE E.C. POLICE  
6 AFTER DEFENSE HAD FILED AND SERVED A MOTION FOR  
7 DISCOVERY ON THE PROSECUTION, WHO DEFENSE COUNSEL'S  
8 MR. PLUMMER AND ADAIR STATE PROSECUTION FAILED TO  
9 RESPOND. STATEMENT OF FACTS. ON 19 MARCH 04, PETITIONER  
10 WHILE STANDING IN THE THRESHOLD OF HIS APARTMENT  
11 MANAGER'S DOORWAY 'MR. HELSEL AT #6, AT 425 E.  
12 MAIN ST. E.C. CA. 92020, PETITIONER WAS ALLEGED TO HAVE  
13 CALLED 911 TO REPORT AN UNUSUAL OCCURANCE, PETITIONER  
14 IN HIS REASONABLE EXPECTATION OF PRIVACY IN HIS  
15 PRIVATE PLACE IN HIS RESIDENTIAL APARTMENT COMPLEX  
16 WAS, INTRUDED UPON WITH UNREASONABLE AND EXCESSIVE  
17 FORCE, BY OFFICER HOLMES EXCEEDING THE TERRY  
18 LINE OF AUTHORITY, PULLED A "HOT STOP" GUN ON AN  
19 OBVIOUS UNARMED PETITIONER WITH NO CELL PHONE  
20 IN HIS POSSESSION, THE POLICE WITHOUT PROBABLE  
21 CAUSE, OR INTERFERENCE SEIZED HIS PERSON IN VIOLATION  
22 OF HIS 'U.S. CONST. FEDERALLY GUARANTEED RIGHT, 14TH  
23 AMENDMENT SPECIFICALLY AND STIPULATED DUE PROCESS  
24 AND EQUAL PROTECTION CLAUSES STATEMENT OF RELEVANT FACTS  
25 SEE EXHIBIT B, PAGE 1, RT. EXCEPT 177,  
26 LINES 1-7, 11, 14, 15, 16. THE COURT: ALL RIGHT (24 MARCH 05?) ANY RESPONSE BY THE  
27 PEOPLE? MS. HANNAH--CIRCUMSTANCES AND THE RESULT OF THE INCIDENT THAT  
28 OCCURED ON MARCH 19TH OF LAST YEAR. WHE THER THE ISSUE--THE WHOLE  
QUESTION OF THE TRIAL IS WHETHER MR. BURTON IS THE PERSON THAT COMMITTED

1. THE (ALLEGED) CRIME, NOT WHETHER OR NOT MR. THOMAS IS IN FACT, A VICTIM  
2. OF A (ALLEGED) CRIME. MS. HANNA: BUT THE PEOPLE CAN CERTAINLY REFER TO MR.  
3. THOMAS AS MR. THOMAS. THE COURT: ALL RIGHT. SEE EXHIBIT B' PAGE 4, RT  
4. EXCERPT 888, LINES 9-28 - THE COURT: -- I WENT THROUGH MY NOTES TO REVIEW  
5. IT MR. THOMAS -- HE ADMITTED QUITE A BIT TOO, SO YOUR INTENSION AND YOUR  
6. PURPOSE IS TO SHOW HIS CHARACTER FOR VIOLENCE AND ALSO PERHAPS  
7. DISHONESTY. HE HAS ADMITTED VARIOUS CONVICTION. HE'S ADMITTED THAT  
8. HE FOUGHT A LOT WITH MS. CLARK. HE ADMITTED SHOVING HER HE --  
9. AS TO THE STALKING INCIDENTS, HE ADMITTED SOME OF THOSE INCIDENTS  
10. INCLUDING THROWING OBJECTS AT THE WINDOW, CALLING ON THE  
11. PHONE, MAKING MULTIPLE CALLS, HE DISPUTED THE DATE, BUT HE AGREED  
12. HE DID THAT. HE AGREED THAT HE HAD TOLD HER THAT IF HE DIDN'T  
13. GET THE CAR BACK, HE HAD A BULLET WITH HER NAME ON IT. SO THERE  
14. ARE -- THROUGH HIS OWN ADMISSIONS, AND THEN AS TO -- LET'S SEE.  
15. I THINK HE'S STILL TALKING ABOUT MS. CLARK WHEN HE SAYS  
16. THAT THEIR RELATIONSHIP WAS STORMY; THAT HE WAS PHYSICAL  
17. A COUPLE OF TIMES, MAYBE 60 TO 70 ARGUMENTS; CHOKED HER  
18. IN '93; HAS A PROBLEM WITH HIS TEMPER. SO I THINK  
19. HE'S ADMITTED SOME OF THAT. AND I'LL ALLOW YOU TO  
20. IMPEACH HIM ADDITIONALLY, SEE EXHIBIT B, PAGE 17, R.T. EXCERPT 882.  
21. LINES, 1, 6-24. THE COURT: 1250 AND 1251? MR. ADAIR: THE OTHER  
22. THING IS, IT ALSO SORT OF TIES INTO MY REQUEST TO HAVE THE  
23. DECLARATIONS IN THE CIVIL RESTRAINING ORDER PROCEEDINGS IN THIS  
24. COURT THAT TOOK PLACE WHERE MR. BURTON DID EXPRESS THE  
25. FACT THAT HE HAD BEEN THREATENED AND THAT HE WAS AFRAID  
26. OF THIS PERSON (MEANING MR. THOMAS) THE COURT: SO THAT WOULD BE  
27. THE DECLARATION IN THE ORDER TO SHOW CAUSE -- MR. ADAIR: YES,  
28. YOUR HONOR. THE COURT: THAT WAS FILED ON FEBRUARY 20TH OF '04P

1 MR ADAIR: YES, YOUR HONOR. AND THEN THERE IS NOT QUITE AN  
2 ELABORATE A DECLARATION, BUT SOMETHING SIMILAR IN THE CHILD  
3 CUSTODY DECLARATION IN A DIFFERENT PROCEEDING IN THIS COURT.  
4 THE COURT: AND THAT WOULD HAVE BEEN THE CUSTODY  
5 DECLARATION THAT HE FILED AGAINST ANGELA -- MR. ADAIR: SANDERS  
6 THE COURT: SANDERS. SEE EXHIBIT "B", PAGE 18, RTEXCERPT 883, LINES  
7 4-8, 12, 13, 16, 18, 25-28. THE COURT: ALL RIGHT, LET ME JUST LOOK  
8 AT THE DECLARATION HE FILED IN THE CIVIL HARASSMENT CASE. SO  
9 THE NATURE OF HIS COMPLAINTS INCLUDE THREATS OF PHYSICAL  
10 HARM AND DEATH OVER THE PHONE; WHILE APPROACHING HIS VEHICLE;  
11 -- OKAY. MR. TROCHA, YOUR RESPONSE? MR. TROCHA: I THINK WE  
12 COVERED THIS IN -- IT'S THE DEFENDANT FILING PAPERWORK  
13 WITH THE COURT AND -- TO PROVE TO TRUTH THAT HE WAS  
14 THREATENED DESPITE THE -- A DIFFERENT STORY, THE COURT:  
15 ALL RIGHT. I'LL CONSIDER THAT -- I'LL LOOK AT THE CASE LAW  
16 INVOLVING 1250 AND 1251. SEE EXHIBIT "B" PAGE 23, RTEXCERPT 329,  
17 LINE 9, 4-10, 20-23. MR. ADAIR: WELL WE'VE REQUESTED PHOTOGRAPHS  
18 -- I THINK IT STARTED WITH -- WITH THE PRIOR ATTORNEY ON THE CASE  
19 APPROXIMATELY A YEAR AGO REQUESTING PHOTOGRAPHS, AND THEY --  
20 FIVE OWNERS -- THAT WAS IN THE FORM OF, I THINK, A LETTER AND  
21 AN ACTUAL FILED MOTION THAT WAS NEVER HEARD, [A DISCOVERY  
22 MOTION] THAT WAS LAST YEAR. I FOLLOWED UP WITH A  
23 LETTER. THE COURT: MR. TROCHA, DO YOU HAVE ANYTHING TO SAY  
24 IN RESPONSE? MR. TROCHA: I DON'T KNOW THE HISTORY OF THE  
25 PHOTOGRAPHS OR ANYTHING. THE COURT: OKAY. SEE EXHIBIT "B",  
26 PAGE 20, RTEXCERPT 1235, LINES 1, 5-11, 13-28. STATES: EL CAJON, CALIFORNIA  
27 FRIDAY, 7/29/05, 3:07 P.M. THE COURT: ALL RIGHT. MR. BURTON, WHAT IS THE BASIS  
28 OF THIS MARSDEN MOTION? THE DEFENDANT: YES, IT'S INEFFECTIVE ASSISTANCE

1 OF COUNSEL - IT DEPRIVED MY SIXTH AMENDMENT RIGHT TO AN  
2 EFFECTIVE DEFENSE BY NOT PROVIDING THE COURT WITH PERTINENT  
3 INFORMATION THAT HE HAD KNOWN ABOUT THAT HE DID NOT PRESENT  
4 TO THE COURT. -- WITNESSES. -- ALSO, HE FAILED TO FILE THE  
5 APPROPRIATE MOTIONS THAT NEEDED TO BE FILED -- A MOTION  
6 WHEREAS MY DUE PROCESS WAS VIOLATED BY PROSECUTION'S  
7 FAILURE WITHIN A TIMELY MANNER TO PROVIDE DEFENDANT  
8 WITH DISCOVERY. HE FAILED TO FILE THE APPROPRIATE  
9 MOTIONS TO DISMISS DUE TO DUE PROCESS VIOLATION.  
10 -- THIS IS A LETTER THAT MR. PLUMMER HAD SENT TOMS, HANNAH,  
11 REQUESTING DISCOVERY, AND ANOTHER LETTER WHERE DISCOVERY --  
12 THE COURT WAS INFORMED THAT THE PROSECUTION HAD ALREADY  
13 RECEIVED THE MOTION REQUESTING, UNDER BRADY DISCOVERY.  
14 PROSECUTION DID NOT RESPOND, -- AND I WOULD LIKE THE  
15 TRIER OF FACT TO RECONSIDER -- TO RE-RULE ON MY MOTIONS.  
16 SEE EXHIBIT B, PAGE 21, RTEXCERPT 1236, LINES 2-11-13, 14-20  
17 THE COURT: WELL, ACTUALLY, MR. BURTON, LET ME STOP YOU RIGHT THERE  
18 DOES YOUR ENVELOPE PERTAIN TO YOUR EARLIER MOTIONS? THE  
19 DEFENDANT: YES, IT DOES, MA'AM. THE COURT: ALL RIGHT. -- AS  
20 I TOLD YOU WHEN YOU RAISED YOUR MARSDEN MOTION, I BELIEVE, ON  
21 THE FIRST DAY OF TRIAL, YOU HAD RAISED ABOUT TEN POINTS, NINE  
22 OF THEM -- RAISED PRIOR TO THE FIRST DAY OF TRIAL -- ONE OF THOSE  
23 HAD TO DO WITH DISCOVERY ISSUES I FIND THAT AT THIS POINT  
24 RAISING NEW DISCOVERY ISSUES OR ANYTHING RELATING TO  
25 MOTIONS THAT YOU PREVIOUSLY HAVE RAISED REALLY DOESN'T PERTAIN  
26 TO A BASIS TO RELIEVE ~~YOUR~~ COUNSEL ~~AND~~ YOUR COUNSEL AT  
27 THIS STAGE. -- AND IT'S DENIED. SEE EXHIBIT A, PAGE 85, R.T.  
28 EXCERPT. 1242 LINES 8-10, 12-16 MR. ADAIR FINE, THANK YOU,

1 HONOR. YOUR HONOR, THE FIRST ISSUE, I BELIEVE, AS RAISED IN OUR  
2 PAPERS ARE MR. BURTON'S FARETTA MOTION, -- HE MAILED IT TO THE  
3 COURT ON OR ABOUT JULY 7TH OF THIS YEAR BEFORE TRIAL STARTED  
4 -- AND IT'S OUR CONTENTION THAT THAT NEEDED TO BE RULED ON.  
5 SEE EXHIBIT "B" PAGE 87, RTEXCERPT 1243, LINES 14, 16, 18-24,  
6 SEE ALSO EXHIBIT "A" PAGE 88, RTEXCERPT 1245, LINES 18-24  
7 SEE ALSO EXHIBIT "B" PAGE 89, RTEXCERPT 1246, LINES 1-28 -  
8 ( 21 OCTOS DAY OF SENTENCING MOTION FOR NEW TRIAL ) MR. ADAIR, THE  
9 SITUATION REALLY WOULD GIVE RISE TO A -- ACQUITTAL, FOR ALL  
10 THOSE REASONS AND PARTICULARLY THE REASONS THAT IT IS IN THE  
11 INTEREST OF JUSTICE, THIS IS THE KIND OF THING THAT COULD  
12 AFFECT A JURY, MOST PROBABLY WOULD AFFECT A JURY, WERE  
13 ASKING FOR A NEW TRIAL THE COURT; OKAY. THANK YOU.  
14 MR. TROCHA WOULD YOU CARE TO RESPOND? THE COURT. BRIEF REPLY;  
15 MR. TROCHA: MR. BURTON HAS A DOCUMENT, WHICH -- IT'S A COPY, I  
16 GUESS, OF THE DOCUMENT, WHICH HE HAD FILED APPARENTLY BACK  
17 IN JULY. I BELIEVE IT APPEARS TO BE MAILED TO THE COURT AND  
18 PART OF MANY ISSUES THAT HE RAISES IN THE DOCUMENT  
19 APPEARS TO BE A FARETTA MOTION. MR. TROCHA: THERE DOES  
20 APPEAR TO BE A FILE STAMP ON THE ENVELOPE. THE COURT?  
21 WHATEVER HAS BEEN FILED WITH THE COURT WOULD BE IN  
22 THE COURT FILE. MR. ADAIR: COULD I HAVE THIS FILED AS AN  
23 EXHIBIT, YOUR HONOR? THE COURT: THE PURPOSE OF IT BEING? IT IS  
24 MR. BURTON'S REPRESENTATION THAT THIS IS THE DOCUMENT HE FILED  
25 WITH THE COURT? MR. ADAIR: YES YOUR HONOR. THE COURT: WELL,  
26 WHY DON'T YOU LET ME LOOK AT IT. IT MAY BE THAT WE HAVE IT IN  
27 THE COURT FILE, IN WHICH CASE WE DON'T NEED TO DO THAT.  
28 ( COUNSEL HANDS DOCUMENT TO THE COURT. )

P.O. BOX 5246 - CRAFT, CA 93212  
COR CORAN CA. 93212

1 THE COURT: ALL RIGHT. THAT DOCUMENT IS IN THE COURT FILE AND THERE  
2 IS AN ENVELOPE PRECEDING THE DOCUMENT WHERE THE  
3 ENVELOPE IS FILE-STAMPED JULY 7TH. SO WE DON'T NEED TO  
4 HAVE ANOTHER COPY. AND THAT, JUST FOR THE RECORD, IS A  
5 DOCUMENT WHICH IS IN HANDWRITING IN PENCIL  
6 STATING AT THE BEGINNING "~~THE~~ <sup>PROSE</sup> ~~MEMORANDUM OF POINTS AND~~ <sup>PROSE</sup>  
7 ~~AUTHORITIES~~, NOTICE OF MOTION, AND MOTION TO DISMISS  
8 BECAUSE DENIAL OF RIGHT TO DUE PROCESS, SIXTH, ~~FOURTH~~ <sup>PROSE</sup>  
9 AND FIFTH AMENDMENT VIOLATIONS," AND THEN IT GOES ON  
10 WHERE ANOTHER THREE OR FOUR INCHES OF-- RAISING OTHER  
11 ISSUES. AND IN THE MIDDLE OF THAT ON THE FRONT PAGE  
12 THERE IS A REFERENCE TO THE WORD "FARETTA" (PROSE) SO I  
13 THINK THAT MAKES THE RECORD AS TO WHAT WAS FILED  
14 SEE EXHIBIT "A," PAGE 90, RT. EXCERPT 1247, LINES 2-15, 19-20  
15 THE COURT: ALL RIGHT. LET ME DEAL FIRST WITH THE ISSUE OF  
16 RELATING TO THE CLAIM OF FARETTA. FIRST OF ALL, I AM NOT  
17 SURE THAT THAT WOULD REALLY ~~BE~~ <sup>BE</sup> APPROPRIATELY BE GROUNDS FOR  
18 A NEW TRIAL MOTION AS OPPOSED TO AN ISSUE FOR WHICH THERE  
19 MAY OR MAY NOT BE AN APPELLATE ISSUE TO RAISE. BUT IN ANY  
20 EVENT, I WOULD BE DENYING IT FOR THE FOLLOWING REASONS  
21 -- THE PAPERWORK WAS SENT BY MR. BURTON TO THE COURT ON  
22 EITHER JULY 7TH OR JULY 8TH, BOTH DATES APPEAR ON THE ENVELOPE  
23 THE NEXT COURT HEARING THAT WE HAD AFTER THAT DATE  
24 WAS THE DAY OF TRIAL, AND IT WAS NOT CALLED TO THE COURT'S  
25 ATTENTION THAT THERE WAS ANY PENDING FARETTA ISSUE --  
26 ANY TIME HE HAD WANTED THE COURT TO RULE ON THE FARETTA  
27 MOTION, HE CERTAINLY WOULD HAVE HAD THAT OPPORTUNITY.  
28 SEE NOW EXHIBIT "A," PAGE 91, RT. EXCERPT 1248, LINES 14-17 THE COURT:

MR. E.W. BURTON #602720  
 P.O. BOX 5246 - CSATH/SPC1-132L  
 CORCORAN, CA. 93212

1 THE TRIAL -- I DON'T FEEL THAT THAT WAS BROUGHT TO THE COURT  
 2 IN SUFFICIENT FASHION FOR THE COURT TO RULE, AND THEREFORE,  
 3 THAT GROUND FOR A MOTION FOR A NEW TRIAL IS DENIED.  
 4 SEE EXHIBIT "A" PAGE 19, RT. EXCERPT 183, (MARSDEN 16 MARCH 05) LINES  
 5 19-21, 24-28, SEE ALSO EXHIBIT "A" PAGE 20, LINES 7, 8, 10-12, 14, 15, 17-21, 24, 26, 27.  
 6 THE COURT: OKAY NOW, -- TELL ME SOMETHING ELSE BEYOND THIS  
 7 VIOLATION OF ATTORNEY/CLIENT PRIVILEGE, THE COURT: IT'S NOT A CAPITAL  
 8 CASE. THE DEFENDANT: WELL, IT HAS TO DEAL WITH THE REST OF MY LIFE.  
 9 AND I FEEL THAT TIME AND EFFORTS NEEDED TO TAKE PLACE AS FAR AS  
 10 PUTTING THIS CASE TOGETHER AS FAR AS STRATEGY, -- I FEEL AS THOUGH  
 11 THAT HAS NOT BEEN DONE. I FEEL THERE'S A CONFLICT OF INTEREST  
 12 HERE, AND IT HAS BEEN FROM THE VERY BEGINNING. THE COURT: WHAT KIND  
 13 OF VISITS? THE DEFENDANT: I HAVEN'T HAD (ATTORNEY) THE VISITS, AS  
 14 FAR AS DISCUSSING THE CASE. -- EFFORTS IN RETRIEVING CERTAIN  
 15 THINGS, THE COURT: CAN YOU BE MORE SPECIFIC? THE DEFENDANT: YES --  
 16 MR. THOMAS VIA MY CELL PHONE, BECAUSE MY DAUGHTER WOULD  
 17 CALL ME ON MY CELL PHONE, AND HE CALLED, THREATENING ME AND I  
 18 ASKED (MR. ADAIR) -- RETRIEVE AND REVIVE THOSE MESSAGES, WHICH  
 19 WOULD SUPPORT MY CASE, BECAUSE -- THE COURT: LET ME MAKE  
 20 SURE I UNDERSTAND. THE -- THERE WERE CALLS MADE TO YOUR  
 21 CELL PHONE -- THE DEFENDANT: YES. THE COURT: AND THEN  
 22 AT SOME POINT YOU ASKED THE DEFENSE -- THE DEFENDANT: RIGHT.  
 23 THE PHONE NUMBER IS AREA CODE 619-253-1895. IT'S A SPRINT  
 24 PHONE, SPRINT PCS. SEE EXHIBIT "D" PAGE 25, RT EXCERPT 332, LINES  
 25 8-11, 14, 15, 16, 27. SEE ALSO EXHIBIT "D", PAGE 26, RT EXCERPT 333, LINES  
 26 1, 2, 4, 5, 9, 10-17, 19, 20-22, 26.  
 27 THE COURT: MR. TROCHA, DID YOU HAVE ANYTHING ELSE? MR. TROCHA:  
 28 THERE WAS ONE THING, YOUR HONOR AND THE 911 TAPES REMINDED ME.

P.O. Box 5246-Corcoran, CA 93212

1 WE DO HAVE UNDER SUBPOENA THE DISPATCHER THAT MR. THOMAS  
2 WAS SPEAKING TO -- BE SOME HEARSAY ISSUES, -- MY REQUEST  
3 IS TO HAVE HER TESTIFY INITIALLY THAT SHE WAS TALKING  
4 TO ~~MR. BURTON~~ <sup>ALLEGED</sup> -- CONTEMPORANEOUS STATEMENT TO EXPLAIN  
5 THE ACTION. THE COURT: TO CALL IN YOUR CASE IN CHIEF?  
6 MR. TROCHA: IT IS, -- WITHOUT GETTING INTO ANY DETAILS  
7 OF THE CALL, -- BUT THEN THE CALL JUST ENDED 30 SECONDS  
8 LATER SHE GOT A 911 CALL. THE COURT: ALL RIGHT. MR. ADAIR  
9 YOUR RESPONSE TO THAT? MR. ADAIR: ~~DEFENDANT'S~~ <sup>DEFENDANT'S</sup> ~~OBJECTION~~ <sup>OBJECTION</sup>  
10 OBJECTION, BUT I BELIEVE SHE'S A WITNESS THAT WAS  
11 RELATIVELY LATE DISCOVERED OR WHATEVER, I DON'T BELIEVE  
12 THERE ARE ANY REPORTS CONCERNING HER STATEMENTS THAT  
13 I'VE RECEIVED. THE COURT: WELL, WHY DON'T YOU CONSULT  
14 WITH MR. TROCHA ON THAT. DID YOU KNOW THE NAME OF THE  
15 WITNESS? MR. TROCHA: I DO, IT'S KENDALL HILDENBRAND.  
16 THE COURT: ALL RIGHT. SEE EXHIBIT "D" PAGE 27, RTE EXCERPT  
17 0359, DATED 7-19-05. (MINUTE ORDERS) SEE - ATTORNEY ADAIR  
18 MAKES A REQUEST FOR THE 911 TAPES. THE PEOPLE INDICATE THAT  
19 THERE WAS NEVER A REQUEST MADE AND THE TAPES WERE  
20 RECORDED OVER. ATTORNEY ADAIR MAKES A MOTION TO DISMISS  
21 BASED ON DESTRUCTION OF EVIDENCE THAT SHOW THE DEFENDANTS  
22 INNOCENCE THE MOTION IS DENIED. ATTORNEY ADAIR MAKE A  
23 DISCOVERY MOTION FOR PRODUCTION OF VIDEO FROM THE POLICE CAR  
24 (ARREST OFFICER KIRK ~~AT~~ HOLMES AT TIME OF DEFENDANTS ARREST) THE  
25 MOTION IS DENIED. SEE EXHIBIT D, PAGE 22, RTE EXCERPT 330, LINES  
26 17-25, SEE ALSO EXHIBIT "D", PAGE 23, RTE EXCERPT 331, LINES 3, 4, 6, 7, 10, 13, 19, 23.  
27 MR. ADAIR: I'LL HAVE TO CHECK AND SEE IF IT'S BEEN PREVIOUSLY PROVIDED, BUT WE  
28 NEED A COPY OF THE -- 911 CALL TO THE DISPATCHER. MR. TROCHA: AS TO THAT,  
29 I DON'T KNOW WHAT HAPPENED TO THE TAPES. MS HANNAH INFORMED ME THAT WHEN  
30 THIS CASE ORIGINALLY CAME AROUND, -- THE TAPES WERE EVENTUALLY TAPED  
31 OVER. SO THERE ARE NO TAPES. SEE FILED AND SERVED MOTION FOR DISCOVERY FILE ~~STAMPED~~  
32 7-30-04, EXHIBIT B, PAGES 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, RTE EXCEPTS, 0011-0022, LINES 1-28 ALL.  
33 SEE ALSO EXHIBIT B, PAGE 24, RTE EXCEPT 0023 (INFORMAL REQUEST 7-6-04 FOR DISCOVERY) LINES ALL.

MR. BURTON 402/20

P.O. BOX 5246-CRAT/SPCH-132L

COR COR ANCA. 93212

MR. TROCHA: THEY WERE INADVERTENTLY DESTROYED BY THE POLICE DEPARTMENT. -- BUT AS TO THE EXACT WORDING OF THE CALL, WE DON'T HAVE THAT, THE COURT; ALL RIGHT. -- THERE'S NOTHING TO PRODUCE IF IT'S BEEN DESTROYED. MR. ADAIR WOULD ASK THE CASE BE DISMISSED FOR THE DESTRUCTION OF EVIDENCE THAT MIGHT TEND TO SHOW MR. BURTON'S INNOCENCE, THE COURT; WELL, THAT MOTION WILL BE DENIED, AND I THINK THAT THAT MOTION HAS BEEN RAISED BEFORE IF MY MEMORY'S CORRECT. LET ME LOOK BACK, WELL I DON'T. -- IT WAS INADVERTENTLY DESTROYED, AND THE MOTION IS DENIED, SEE EXHIBIT "D", PAGE 24, RT. EXCERPT 0026. (ALLEGED RESPONSE BY MS. HANNAH, NEVER RECEIVED NOR HEARD BY DEFENSE, AS PERTAINING TO MR. ADAIR'S TESTIMONY IN EXCERPTS) FOR THIS ACTION PETITIONER STIPULATES TO THIS PORTION OF EXCERPT OF THE "ALLEGED" RESPONSE ONLY, STIPULATES, LINES 1, 9, 15, 17-21, 23-29, PETITIONER DENIES ALL OMITTED PORTIONS OF EXCERPTS, AND STIPULATE TO HIS PROVIDED RT. EXCERPTS IN THIS PETITION FOR FEDERAL H.C. RELIEF, RATHER THAN TRIAL TRANSCRIPTS, STATE'S, BY THE LAW. -- IN THIS CASE, THE FOLLOWING ITEMS HAVE BEEN SET OUT FOR DISCOVERY; -- THE PEOPLE HAVE ALSO REQUESTED THE 911 TAPES, ALL OF THE PHOTOGRAPHS, -- AS THE EVIDENCE CONTINUES TO ARRIVE AT OUR OFFICE, COPIES WILL BE MADE AND SET OUT FOR THE DEFENSE -- CONCLUSION -- THE PEOPLE HAVE AND WILL COMPLY WITH PROVIDING TO DEFENSE COUNSEL THE DISCOVERY IN THIS CASE. -- DATED: AUGUST 13, 2004 -- RESPECTFULLY SUBMITTED, BONNIE M. DUMHANS, DISTRICT ATTORNEY (SIGNED) "S. MARIA HANNAH" DEPUTY DISTRICT ATTORNEY -- ATTORNEYS FOR PLAINTIFF, SEE NOW EXHIBIT "D", PAGE 28, RT. EXCERPT 572, LINES 7, 12-14, 16-18, 20-22. THE COURT; ALL RIGHT. BUT OTHERWISE IT WILL -- WITH REGARD TO THE OFFICER OR THE DISPATCHER WHO'S GOING TO BE TESTIFYING NEXT, I BELIEVE -- I HAD HEARD MR. TROCHA'S REQUEST, YOU WERE GOING TO RESPOND. -- SO MUCH THAT IT'S NOT BEING OFFERED FOR IT'S TRUTH, BUT IT'S MORE CONTEMPORANEOUS STATEMENTS THAT -- MR. ADAIR, WELL I WOULD SUBMIT IT'S NOT -- THE COURT; HIS ACTUAL WORDS AS TO WHAT HAS HAPPENED LIKE, -- THAT'S PROBABLY HEARSAY.

MR. EUGENE BORTON # 4020  
 P.O. BOX 5246 CSATF/PC1-132L  
 CORCORAN, CA.

1 SEE EXHIBIT "D" PAGE 29, RT. EXCERPT 574, LINES 21-28, SEE ALSO  
 2 EXHIBIT "D" PAGE 30, RT. EXCERPT 575, LINES 6-13, 22-26. MR. TROCHA:  
 3 Q. GOOD AFTERNOON, MS. HILDENBRAND, A. (MS. HILDENBRAND. HELLO,  
 4 Q. DO YOU WORK AT THE EL CAJON POLICE DEPARTMENT?  
 5 A. I DO. Q. IN WHAT CAPACITY? A. I'M A COMMUNICATIONS  
 6 OPERATOR FOR THE POLICE DEPARTMENT. Q. (MR. TROCHA); SPECIFICALLY  
 7 WHAT ARE YOUR DUTIES? A. (MS. HILDENBRAND) I ANSWER  
 8 ALL CALLS FOR SERVICE, NON-EMERGENCY AND 911 CALLS, Q. ARE  
 9 YOU ABLE TO DIFFERENTIATE BETWEEN THE CALLS? A. YES.  
 10 Q. HOW SO? A. THERE IS A DIFFERENT DIAL TONE FOR 911, --  
 11 Q. WERE YOU ON DUTY BACK OF MARCH 19TH (04) OF LAST YEAR?  
 12 A. YES Q. AS A COM OPERATOR? A. YES. AS A COM OPERATOR  
 13 SEE NOW EXHIBIT "B" PAGE 39, RT. EXCERPT 578, LINES 19, 11, 12, 13, 23, 24, 25, 26.  
 14 Q. (MR. TROCHA DID MR. THOMAS USE FOUL LANGUAGE? A. (MS. HILDENBRAND) I'M  
 15 ASSUMING HE DID. Q. YOU CAN'T REMEMBER? A. HE WAS VERY AGITATED.  
 16 Q. (MR. TROCHA) -- DID HE SAY GOODBYE OR INDICATE -- A. -- (MS. HILDEN-  
 17 BRAND) -- AND I RECEIVED IMMEDIATE 911 CALLS AFTERWARDS.  
 18 SEE EXHIBIT "D" PAGE 3, RT. EXCERPT 103, LINES 1, 2, 4-29. SEE ALSO EXHIBIT "D" PAGE,  
 19 4, RT. EXCERPT 104, LINES 1-15, 18-21, 23, 27, 28. SEE ALSO EXHIBIT "D" PAGE 5, RT,  
 20 EXCERPT 105, LINES 3, 15-19, 23-28. SEE ALSO EXHIBIT "D" PAGE 6, RT. EXCERPT 106,  
 21 LINES 1-7, 9-18, 20-28 - SEE EXHIBIT "D" PAGE 7, RT. EXCERPT 107/150, LINES 15-22  
 22 SEE EXHIBIT "D" PAGE 8, RT. EXCERPT 173, LINES 1-14. THE COURT: ALL RIGHT.  
 23 MY TENTATIVE IS AS FOLLOWS: AND THE TENTATIVE IS BASED UPON THE  
 24 AUTOMOBILE EXCEPTION TO THE FOURTH AMENDMENT, MY TENTATIVE  
 25 IS FURTHER TO GRANT THE MOTION TO SUPPRESS EVIDENCE FROM  
 26 APARTMENT NO. 5, CONCLUDING THAT THE PEOPLE, AFTER A FULL  
 27 CONSIDERATION AND REVIEW OF THE EVIDENCE PRESENTED, HAVE  
 28 NOT MET THEIR BURDEN OF DEMONSTRATING TO THE COURT'S  
 29 SATISFACTION THAT THE ENTRY, SEARCH AND SEIZURE OF ITEMS  
 30 WITHIN THE APARTMENT WAS DONE PURSUANT TO A CONSENT  
 31 RENDERED BY MR. BURTON. I UNDERSTAND THERE'S CERTAIN  
 32 OTHER ITEMS THAT MR. BURTON WOULD LIKE SUPPRESSED  
 33 FLOWING FROM HIS ARREST.

1 THE ONLY ITEMS THAT I'M TALKING ABOUT AS SUPPRESSING ARE WHATEVER  
2 WAS FOUND IN OR DERIVED FROM APARTMENT NO 5, PERIOD. MR. ADAIR--WELL,  
3 MISS HANNAH, YOU'VE GOT THE LABORING OAR ON THE MOTION SINCE THIS WAS A  
4 WARRANTLESS SEARCH, MINDFUL OF THE COURT'S TENTATIVE, DO YOU WISH TO BE  
5 HEARD? MS. HANNAH: I DO, YOUR HONOR, YOUR HONOR, REPRESENTING THIS POINT,--  
6 THE POLICE OFFICERS TESTIFIED AFTER TAKING THE DEFENDANT INTO  
7 CUSTODY THAT THEY APPROACHED HIM,-- THE COURT, RIGHT THERE IN THE <sup>ENTRY</sup> ~~LOBBY~~  
8 --TOOK HIM DOWN,-- THERE WAS NO CONVERSATION, TESTIMONY OF A CONVERSATION  
9 AT THE PATROL VEHICLE ABOUT A CONSENT TO SEARCH. AND THE WAY I VIEW IT IS  
10 THAT THE COPS DON'T HAVE THEIR ACT TOGETHER, AND HOWEVER IT WENT  
11 DOWN, THEY EITHER HAVE A VERY POOR RECOLLECTION OR FAILURE OF  
12 RECOLLECTION, AND I DO NOT CONCLUDE FROM THE TESTIMONY OF MR.  
13 HELSEL THAT THERE WAS CONSENT NECESSARILY GIVEN BY MR. BURTON  
14 DURING WHAT MR. HELSEL DESCRIBED AS A DIALOGUE AT THE PATROL  
15 VEHICLE THAT HE WAS NOT IN A POSITION TO HEAR. THE TESTIMONY OF AGENT  
16 KIRK WAS CLEARLY THAT THE PURPORTED CONSENT TO SEARCH WAS GIVEN  
17 BY MR. BURTON RIGHT THERE IN THE PARKING LOT BEFORE HE WAS EVER  
18 ESCORTED TO THE PATROL VEHICLE, AND BASED UPON THE TESTIMONY OF OFFICER  
19 HOLMES,-- I'M SATISFIED IT DIDN'T GO DOWN THAT WAY, MS. HANNAH: YOUR HONOR,  
20 AGENT KIRK INDICATED-- THE COURT, YOU'VE GOT TO READ THIS IN CONTEXT  
21 AND VIEW IT IN CONTEXT, I'VE REVIEWED THE TRANSCRIPT AND I'VE REVIEWED  
22 MY DETAILED NOTES. MS HANNAH:-- I MEAN,-- THEY TOOK HIM INTO CUSTODY,  
23 THEY PUT HIM INTO HAND CUFFS,-- ALL OF THOSE THINGS.-- THE COURT, I'M  
24 NOT SATISFIED THERE WAS A CONSENT, WHETHER FREE OR VOLUNTARY OR OTHERWISE.  
25 THAT'S MY POINT. THE EVIDENCE DOESN'T COME TOGETHER TO CLEARLY SUPPORT  
26 YOUR ARGUMENT OR HOW THIS WENT DOWN. MS. HANNAH: YOUR HONOR,-- CIRCUMSTANCES  
27 THE COURT, NO,-- AS I UNDERSTAND IT, MR. ADAIR, ARE YOU CONCEDED THERE WAS A  
28 CONSENT GIVEN AND THE ONLY ISSUE IS THE VOLUNTARINESS OF THE CONSENT?

MA E.W. BURTON #F08720  
P.O. BOX 5246-09ATF/SP-CT-132L  
CORCORAN, CA 93212

1 MR ADAIR: NO, YOUR HONOR. WE'RE SAYING THAT HE NEVER CONSENTED. THE COURT: --  
2 PERIOD. MS HANNAH: YOUR HONOR: AGENT KIRK HAS TESTIFIED THAT--THE COURT:  
3 I'M MINDFUL OF AGENT KIRK'S TESTIMONY, MS HANNAH: AND THE CIRCUMSTANCE AND  
4 EVEN THE SURROUNDING CIRCUMSTANCES WITH THE PEOPLE'S WITNESSES AND  
5 THE COURT: I'VE LOOKED AT ALL OF IT. I'M NOT PERSUADED. MR. ADAIR: YOU  
6 WISH TO BE HEARD? MR. ADAIR: NO, YOUR HONOR. WE'LL SUBMIT, THE COURT:  
7 THE MOTION TO SUPPRESS IS GRANTED IN PART FOR THE REASONS OUTLINED,  
8 BY THE COURT. THE MOTION TO SUPPRESS ITEMS FROM THE VEHICLE IS  
9 DENIED, NOT BASED UPON A PURPORTED THEORY OF CONSENT, BUT RATHER  
10 BASED UPON THE AUTOMOBILE EXCEPTION TO THE 4TH AMENDMENT. THE  
11 MOTION TO SUPPRESS IS GRANTED, BUT LIMITED, AS I'VE SAID, TO ITEMS-  
12 DERIVED FROM A LAW ENFORCEMENT ENTRY AND SEARCH OF UNITS, THAT  
13 BEING SHOWN BY THE EVIDENCE TO BE MR. BURTON'S APARTMENT, AS  
14 TO WHICH RESIDENCE, OF COURSE, HE HAD STANDING UNDER THE 4TH  
15 AMENDMENT TO OBJECT PRESENTLY TO THE SEARCH THEREOF AND  
16 THE SEIZURE OF ITEMS THERE FROM. SEE EXHIBIT "D," PAGE 8 & EXCERPT 173,  
17 LINES 1-14. MR. ADAIR: BECAUSE-- CAN I HAVE A MOMENT YOUR HONOR? (APPROX 3-24-05)  
18 THE COURT: SURE. MR ADAIR: WE'RE REQUESTING THE CASE BE DISMISSED AS  
19 THE FACTS OF THE CASE HAVE NOT BEEN SUBSTANTIATED--THE ~~CHARGES~~ <sup>CHARGE</sup> ~~HAS~~ <sup>IS</sup>  
20 COURT: WELL, AS TO THAT MOTION, OF COURSE, WE ALREADY HAVE THE 995  
21 MOTION, AND IT WAS DENIED, AND THAT WAS BASED ON THE EVIDENCE AT  
22 THE PRELIMINARY HEARING, AND THE NEXT STAGE FOR THE COURT TO  
23 CONSIDER -- ACTUALLY, THAT'S WHY WE HAVE THE TRIAL, TO DETERMINE  
24 IF THERE'S SUFFICIENT EVIDENCE TO PROVE THE CASE BEYOND A REASONABLE  
25 DOUBT. SO THE COURT WILL NOT GRANT THE MOTION TO DISMISS, BUT  
26 THAT'S THE PURPOSE OF HAVING A JURY TRIAL. THEY WILL MAKE THE DETERMINATION,  
27 SEE NOW EXHIBIT "D" PAGE 17, PAGE 9019A, A. EXCERPT 153, LINES 3-20-05-276  
28 SEE ALSO EXHIBIT "D" PAGE 18, A. EXCERPT 154, LINES 1-19, 20-23, 26-28 ERROR EWB